He also considered, as he was entitled to do, the hardship to P.W.3, a person in close proximity to the respondent (see *Megarry, The Rent Acts*, 8th Edition, page 271).

I am of the opinion therefore that there is evidence upon which the finding of the learned Magistrate can be supported and accordingly it would be wrong for me to disturb that finding. The appeal is accordingly dismissed with costs.

Appeal dismissed.

KWEH KIM HOCK v. THE CITY COUNCIL OF SINGAPORE

[A.C.J. (Rose C.J.) September 13, 1961]

[Singapore — Magistrate's Appeal No. 158 of 1961]

Local Government Ordinance, 1957, s.248(3) and (7) — Abatement order — Whether extent of repairs justified a closing order — Test of "unfit for human habitation."

Under section 248(7) of the Local Government Ordinance, whether a house is unfit for human habitation does not depend on whether it is capable of repair. The relevant question to be decided is whether the nature and extent of the repairs that are necessary are reasonably justifiable having regard to the expense involved in relation to the value of the property.

MAGISTRATE'S APPEAL.

F. B. de Souza for the appellant.

K. T. Alexander (Crown Counsel) for the respondent.

Rose C.J.: A Nuisance Notice was served upon the appellant, with which, it is common ground, he failed to comply. The learned Magistrate thereupon imposed a small fine and made an Abatement Order under section 248(3) of the Local Government Ordinance (No. 24 of 1957).

The appellant contends that having regard to the condition of the premises it is unreasonable to call upon him to execute the necessary repairs and that the appropriate order should be a Closing Order under section 248(6) of the Ordinance.

Sub-section (7) of section 248 reads as follows:—

" (7) A closing order shall only be made where it is proved to the satisfaction of the Court that by reason of a nuisance a dwelling-house is unfit for human habitation, and, if such proof is given, the Court shall make a closing order and may impose a fine not exceeding four hundred dollars."

Whether or not a house is unfit for human habitation is of course a question of fact for the decision of the Magistrate. No express guidance is given in the Ordinance itself as to the matters to be taken into consideration in coming to a decision on the point but, as learned counsel for the appellant contends, guidance may perhaps be obtained from a consideration of section 4 of the (English) Housing Act 1957. It is to be noted — as might indeed be expected — that one of the matters to be considered in that section is the state of repair of the house in question. The learned Magistrate inspected the house and came to the conclusion that it was capable of repair.

Technically, no doubt, that is a correct finding as there must be few houses indeed which are incapable of repair. It seems to me, however, that the relevant question to be decided is whether the nature and extent of the repairs that are necessary in order to comply with the Nuisance Notice are reasonably justifiable having regard to the expense involved in relation to the value of the property.

Under sub-section (7) of section 248 it is clear that the onus is upon the appellant to satisfy the Court of the unfitness for human habitation of the dwelling house. And the matter that I have to consider is whether the learned Magistrate erred in holding that this onus had not been satisfied.

The appellant called an architect who submitted a detailed report upon the condition of the premises. In addition a number of photographs were exhibited which, to my mind, show clearly that the premises are in a state of considerable dilapidation.

The contents of the report are, in my opinion, incontrovertibly corroborated by the photographs and it would seem that the conclusion of the report, which is set out below, is justified:—

" *Conclusion*

In our opinion the evidence shows that the property is in such a dilapidated state that it is now beyond effective repair and that there is cause for concern over the safety and well being of its occupants."

The evidence adduced on behalf of the City Council is in no way so detailed or convincing. Moreover, there was no substantial challenge, on behalf of the City Council, either of the evidence of the appellant's architect or of the contents of the report; or of the photographs.

While one is naturally reluctant to interfere with a finding of fact of the lower Court except on the strongest grounds, I have come to the conclusion in the present matter that the appellant could hardly be expected to have done more to discharge the onus that was upon him. He calls a qualified architect, who supports his (the appellant's) own view of the matter; he submits a detailed report, accompanied by descriptive photographs. And these last matters are not, in substance, challenged by the City Council; nor are they even adverted to in the learned Magistrate's Grounds of Decision.

That being so, I have come to the conclusion that the learned Magistrate should have found that the house in question was unfit for human habitation, within the meaning of sub-section (7) of section 248.

A Closing Order is therefore the appropriate order, and the Abatement Order is cancelled accordingly and a Closing Order substituted.

No argument was addressed to me on the matter of the fine, which is manifestly not unreasonable and is affirmed.

Order accordingly.

Solicitors: *de Souza & de Souza.*

YEO SIM HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Ismail Khan J.) October 20, 1961]

[Muar — Criminal Appeal No. 50 of 1961]

Criminal Procedure — Serious charge — How it should be explained and recorded — Qualified plea of guilty.

In a case serious enough to call for severe penalties and where accused is unrepresented every ingredient and question of the charge should be explained to the accused by the Magistrate and his replies recorded. No plea of guilty should be recorded if there is doubt that the plea is not an unequivocal plea of guilty.

Ruling in *Koh Mui Keow* v. *R.* (1) applied.

Case referred to:—

(1) *Koh Mui Keow* v. *R.* [1952] M.L.J. 214.

CRIMINAL APPEAL.

C. Paramjothy for the appellant.

Tengku Rithaudeen (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The charge against the appellant was that he did land goods imported by sea 20 pigs from a vesssel at a place other than a legal landing place contrary to section 22(1) and (2) of the Customs Ordinance, No. 12 of 1952, and punishable under section 134 thereof.

The appellant pleaded guilty to the charge. He was fined $200, or in default two months' imprisonment. The pigs were ordered to be sold and the proceeds to be credited to revenue. The boat and 53 cages were ordered to be confiscated. The appellant appealed against conviction and sentence.

There is nothing in the record to indicate how the charge and the questions involved were explained to the appellant. It was held in the case of *Koh Mui Keow* v. *Regina,*(1) that in a case serious enough to call for severe penalties, as in this case, and where the accused was unrepresented, every ingredient and question should be explained by the Magistrate to the accused and his replies recorded, and a plea of guilty should not be recorded if there is any doubt whether the plea was an unequivocal plea of guilty.

In this case, the appellant having "admitted the facts" proceeded to say that the engine broke down and the animals had to be unloaded. This to my mind is a qualified plea of guilty and the plea of guilty should not have been entered. I therefore allowed the appeal and ordered the case to be remitted to the Sessions Court for retrial before another President.

Appeal allowed.

Solicitors: *P. T. Wong & Co.*

BAGHER SINGH v. CHANAN SINGH & ANOR.

[C.A. (Thomson C.J., Good J.A., Neal J.) October 25, 1961]

[Ipoh — Civil Appeal No. 28 of 1961]

Transfer of land to avoid judgment execution — Transferee not party to fraud — Title of transferee — Application of common law under s.3(1), Civil Law Ordinance, 1956 and s.42(ii) and (vi) of F.M.S. Land Code (Cap. 138).

The first respondent was the registered proprietor of a piece of land but the evidence disclosed, and it was accepted by the Court of first instance, that half the purchase money had been contributed by the second respondent. On July 4, 1958 the appellant obtained a judgment against the first respondent but before he could execute it, the first respondent, on July 9, 1958, executed a memorandum of transfer, for valuable consideration in favour of the second respondent. With the registration of this memorandum of transfer, the second respondent became the registered proprietor of the land. The appellant claimed a declaration that the transfer to the second respondent was fraudulent as against him. It was argued for the appellant that because there was no statute in force in the Federation of Malaya dealing specifically with conveyances in fraud of creditors, the common law should be applied under section 3(1) of the Civil Law Ordinance, 1956, or if not under this Ordinance, then under section 42(vi) of the F.M.S. Land Code.

Held: (1) that section 3(1) of the Civil Law Ordinance could be invoked only where there was a *lacuna* in the law. In the law applicable to the facts of the case, there was no *lacuna*, because section 42 of the F.M.S. Land Code made provision for fraudulent dispositions of land;

(2) the common law could not be applied under section 42(vi) of the F.M.S. Land Code in this particular instance because section 42(ii) made specific provision for such cases;

(3) as the second respondent was not a party to the fraud his title could not be defeated under the provisions of section 42(ii) and in consequence the declaration sought by the appellant could not be granted.

Cases referred to:—

(1) *The Hontestroom (Owners)* v. *The Sagaporack (Owners)* [1927] A.C. 37.

(2) *Powell* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

(3) *Watt* v. *Thomas* [1947] A.C. 484.

(4) *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

(5) *Rickards* v. *Attorney-General* 8 E.R. 1306.

(6) *Cadogan* v. *Kennet* 98 E.R. 1171.

CIVIL APPEAL.

N. Sharma for the appellant.

F. C. Arulanandom for the respondents.

Thomson C.J.: I agree with what my Lord has said.

One cannot help feeling a certain amount of sympathy for the appellant because the case is full of grounds for suspicion. For myself I am not prepared to say that had I tried it I would necessarily have come to the same conclusion as the trial Judge. Nevertheless considering the trial Judge's judgment in the light of the